

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

On October 16, 2017, defendants Robinson Pharma, Inc. *et al.* (“Defendants”) filed a Motion to Disqualify the assigned District Judge, the Honorable Josephine L. Staton. (Docket No. 158.) Pursuant to General Order 16-05 and Local Rule 72-5, the Motion was assigned to the undersigned for decision. (Referral of Motion to Disqualify Judge, Oct. 17, 2017; Docket No. 159). The Motion is predicated on 28 U.S.C. § 455(a), the general recusal statute, and seeks recusal in light of an asserted appearance of partiality. (Motion, p. 1.) For the reasons set forth below, the Court finds that the Motion is without merit, and denies the Motion.

1 I. Background.

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3 Judge Staton is married to Owen Prell who is currently a partner at
4 One LLP. In October 2104, One LLP filed a breach of contract suit against
5 Robinson Pharma over a fee dispute. (Orange County Superior Court Case No.
6 30-2014-00749074.) On October 20, 2015, the matter was settled for
7 approximately half of what One LLP had sought. (Nguyen Decl., ¶ 3.)

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9 Robinson Pharma attempted to retain One LLP for this action on
10 October 5, 2017. (Id., ¶ 4.) In the ensuing conversation, One LLP advised that it
11 could not accept the matter because of a conflict: Own Prell, a partner, is married
12 to Judge Staton. (Id.) This was the first Defendants learned of a potential
13 conflict.

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15 This case was initiated on October 27, 2014. (Docket No. 1.) Thus,
16 this case and the state court fee litigation were pending at the same time.

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18 Defendants criticize a number of Judge Staton's rulings in this action,
19 including her Markman claim constructions, rulings with regard to the multiple
20 presentation of witnesses, and her decision to give an adverse inference jury
21 instruction which went beyond the sanction which the Magistrate Judge had
22 recommended. (Motion, pp. 5-6.) Defendants believe that Judge Staton will be
23 called on to make additional rulings which will require exercise of her discretion,
24 including a pending motion for an award of enhanced damages against
25 Defendants. (See Docket No. 148.)

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27 From the facts which defendants had learned, they inferred a conflict
28 of interest. Because the fee dispute was settled on terms less favorable than One

1 LLP sought, the income of the Staton household was adversely affected, raising
2 the appearance that Judge Staton might be prejudiced against Defendants.

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4 This Motion fails for two reasons. First, Judge Staton's trial rulings
5 are not a basis for recusal. Second, her husband was not a partner at One LLP in
6 2015, and in fact did not join the firm until January 2016.¹ The perceived
7 predicate for an appearance of partiality does not exist.

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9 I. Disqualification under Section 455.

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11 Section 455(a) provides a broad, fact-driven rule for disqualification:
12 "Any justice, judge, or magistrate judge of the United States shall disqualify
13 himself in any proceeding in which his impartiality might reasonably be
14 questioned." 28 U.S.C. § 455(a). The fact that a judge has made rulings adverse
15 to a party, standing alone, is not a basis for disqualification. Liteky v. United
16 States, 510 U.S. 540, 555 (1994); United States v. Hernandez-Escarsega, 886 F.2d
17 1560, 1581 (9th Cir. 1989).

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19 A judge's adverse rulings, without more, will not support recusal.
20 Litkey, 510 U.S. at 555. There is nothing more here. There is no external
21 evidence of personal bias or conflict. For present purposes, "personal bias" means
22 a bias derived from extra-judicial origins, as opposed to an opinion formed during
23 the course of litigation. Craven v. Unites States, 22 F.2d 605, 607 (1st Cir. 1927);
24 accord United States v. Carignan, 600 F.2d 762, 763-64 (9th Cir. 1979). It is an
25 "attitude toward [the challenging party] that is significantly different from and
26

27 ¹<https://www.linkedin.com/in/owen-prell-3a09206>, last visited Oct. 17, 2017; see
28 <https://www.law360.com/articles/752983/one-llp-adds-ip-entertainment-law-partner>, last visited
Oct. 17, 2017.

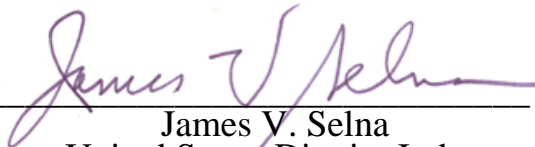
1 more particularized than the normal general feeling of society at large.” Mims v.
2 Shapp, 541 F.2d 415, 417 (10th Cir. 1977).

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4 Given that Owen Prell was not a partner at One LLP at the time of
5 the settlement, there is no basis to infer that his income was affected, adversely or
6 otherwise, by the settlement, and no reasonable person would conclude otherwise.
7 The episode has no bearing on Judge Staton’s rulings to take them out of the usual
8 rule that adverse rulings are not a basis for recusal. Liteky, 510 U.S. at 555;
9 Hernandez-Escarsega, 886 F.2d at 1581.

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11 II. Conclusion.

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13 Defendants’ Motion to disqualify the District Judge is denied. The
14 Court vacates the December 1, 2017 hearing.

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18 Dated: October 17, 2017


James V. Selna
United States District Judge